

(b) *Amount of late charge.* The late charge shall not exceed the lesser of five percent of each installment of principal and interest, up to a maximum of \$10 per installment for any property improvement loan and \$15 per installment for any manufactured home loan, or the maximum amount permitted by applicable State law.

(c) *Method of payment.* Payment of any late charge cannot be deducted from the monthly payment for principal and interest, but must be an additional charge to the borrower.

(d) *Daily interest in lieu of late charges.* In lieu of late charges, the note may provide for interest to accrue on installments in arrears on a daily basis at the interest rate in the note.

[54 FR 36264, Aug. 31, 1989]

§ 201.16 Default provision.

The loan note shall contain a provision for acceleration of maturity, at the option of the holder, upon a default by the borrower.

§ 201.17 Prepayment provision.

The note shall contain a provision permitting full or partial prepayment of the loan without penalty, except that the borrower may be assessed reasonable and customary charges for recording a release of the lender's security interest in the property, if permitted by State law.

[61 FR 19797, May 2, 1996]

§ 201.18 Modification agreement or repayment plan.

(a) *Modification agreement or repayment plan.* A written but unrecorded modification agreement acceptable to the lender and executed by the borrower may be used in lieu of refinancing of a delinquent or defaulted loan to reduce or increase the monthly payment, but not to increase the term or the interest rate, so as to assure that the delinquent or defaulted loan is brought current before or by the end of the loan term. A modification agreement may also be used in lieu of refinancing in connection with a loan that is current to effect a reduction in the interest rate, and in the monthly payment, for the remainder of the loan term. When a modification agreement

is used, no insurance reporting is required under § 201.30.

(b) *Repayment plan.* The lender may elect to negotiate an informal repayment plan with the borrower to enable a temporary delinquency to be cured within a short period of time. The lender may document the terms of the repayment plan by sending a letter to the borrower reciting the terms of their agreement. When a repayment plan is used, no insurance reporting is required under § 201.30.

[52 FR 33406, Sept. 3, 1987, as amended at 54 FR 10537, Mar. 14, 1989]

§ 201.19 Refinanced and assumed loans.

(a) *Conditions on refinancing.* (1) An existing insured property improvement loan or manufactured home loan may be refinanced without an advance of funds only under the following conditions:

(i) A loan that is in default may not be refinanced for an amount greater than the original principal balance of the loan;

(ii) The refinancing of a loan for the original borrower shall be subject to all of the requirements of this part, except §§ 201.20(b) and (c), 201.21(b) through (e), 201.22, 201.23, and 201.26;

(iii) If there are co-makers or co-signers on the original note, the lender shall require the same co-makers or co-signers on the refinanced note, unless the lender obtains the Secretary's approval to release a co-maker or co-signer from liability under the note in accordance with § 201.24(e); and

(iv) A loan that was assumed in accordance with paragraph (c) of this section may be refinanced, subject to all of the requirements of this part except §§ 201.20(b) and (c), 201.21(b) through (e), 201.22, 201.23, and 201.26, as long as the original borrower and any intervening assumptors were released from liability for repayment of the loan at the time the loan was assumed. A lender may not refinance a previously assumed loan under any other circumstances, unless the requirements of § 201.22 are also met and the Secretary has approved a release of the original borrower and any intervening assumptors in accordance with § 201.24(e).

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(2) An existing insured property improvement loan may be refinanced with an advance of funds for additional improvements only under the following conditions:

(i) The existing insured loan must not be in default; and

(ii) The refinancing shall be subject to all of the requirements of this part applicable to the particular type of loan and to the additional improvements being financed.

(3) An existing uninsured manufactured home loan may be refinanced only for the original borrower and only under the following conditions:

(i) The existing uninsured loan must not be in default;

(ii) Refinancing of an existing uninsured manufactured home purchase loan or combination loan shall be subject to all of the requirements of this part applicable to the particular type of loan except §§ 201.23 and 201.26(b)(4);

(iii) Refinancing of an existing uninsured manufactured home lot loan in connection with the purchase of a manufactured home shall be subject to all of the requirements of this part; and

(iv) Refinancing of an existing uninsured manufactured home purchase loan in connection with the purchase of a manufactured home lot shall be subject to all of the requirements of this part except § 201.26(b)(4).

(b) *Note and security requirements for refinanced loans.* (1) Refinancing of a loan requires the execution of a new note and cancellation of the old note.

(2) Refinancing of a loan that was secured when originated, regardless of the principal balance of the note at the time of refinancing, is required to be secured.

(3) Refinancing of a loan that was not secured when originated is not required to be secured if no additional funds are advanced.

(4) When a refinanced loan is secured, the lender shall obtain and record a new security instrument in accordance with § 201.24 and shall release the original lien, unless State law permits a renewal and extension of the original lien.

(5) Copies of all documents pertaining to the original loan must be retained in the loan file for the refinanced loan.

(c) *Assumed loans.* (1) At the option of the lender, an existing insured property improvement loan or manufactured home loan may be assumed, subject to the following conditions:

(i) A determination by the lender that the assumptor is eligible under § 201.20(a) or 201.21(a) and meets the requirements of § 201.22; and

(ii) The execution of an assumption agreement that is satisfactory to the lender and is signed by the assumptor and the original borrower or previous assumptor at the time of assumption.

(2) The lender shall not permit an assumption under any circumstances other than those contained in this section, and shall include appropriate provisions in any note or security agreement to enforce this requirement.

(3) Prior to the execution of the assumption agreement, the lender shall provide the assumptor with a written notice, to be signed by the assumptor and retained in the loan file, that:

(i) States that the loan being assumed is insured by HUD, and describes the actions the Secretary may take to recover the debt if the assumptor defaults on the loan and an insurance claim is paid; and

(ii) Constitutes the assumptor's agreement to pay penalties and administrative costs imposed by HUD as authorized by 31 U.S.C. 3717.

(4) If the other requirements of paragraph (c) of this section are met, the lender at its option may release the original borrower and any intervening assumptors from liability for the repayment of a loan obligation insured under this part. The prior approval of the Secretary under § 201.24(e) is not required. The lender shall retain documentation of the release in the loan file.

[52 FR 33406, Sept. 3, 1987, as amended at 56 FR 52430, Oct. 18, 1991]

Subpart C—Eligibility and Disbursement Requirements

§ 201.20 Property improvement loan eligibility.

(a) *Borrower eligibility.* (1) To be eligible for a property improvement loan (other than a manufactured home improvement loan), the borrower shall